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Palmer Donavin Manufacturing Co., and P-D Midwest Transport, Inc. and International Brotherhood of Teamsters, Local Union No. 377, AFL-CIO. Case 8-CA-33323

September 30, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

This is a refusal-to-bargain case in which the Respondents seek to contest the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and an amended charge filed on April 25 and May 22, 2002,¹ respectively, the General Counsel issued the complaint on May 29, 2002, alleging that the Respondents have violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 8-RC-16282. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondents filed an answer, admitting in part and denying in part the allegations in the complaint.

On July 19, 2002, the General Counsel filed a Motion for Summary Judgment. On July 24, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed a response.

Ruling on Motion for Summary Judgment

The Respondents admit their refusal to bargain, but contest the validity of the certification based on their contentions, raised and rejected in the representation proceeding, that they do not constitute a single employer and therefore employees from the two Respondents do not constitute a single appropriate unit, and that the election should have been set aside because the Union engaged in misconduct prior to the election.

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce

¹ The Respondents' answer to the complaint states that they have no knowledge as to the truth of the allegations regarding the filing and service of the charge and amended charge, and therefore they deny those allegations. The General Counsel, however, has attached copies of the charge, amended charge, and affidavits of service of those charges as exhibits to the General Counsel's motion, and the Respondents have not challenged the authenticity of those exhibits. Accordingly, it is clear that the charges were filed and served as alleged.

at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment and will order the Respondents to bargain with the Union.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Palmer Donavin Manufacturing Co. (Palmer) is an Ohio corporation with a warehouse located at 1400 Front Street, Warren, Ohio, where it is engaged in the wholesale distribution of building materials.

Respondent P-D Midwest Transport, Inc., is an Ohio corporation and a wholly-owned subsidiary of Respondent Palmer, with a facility located at 1400 Front Street, Warren, Ohio, where it is engaged in the interstate transportation of goods for Respondent Palmer.

Annually, the Respondents, in conducting the business operations described above, purchase and receive goods at their Warren, Ohio facility valued in excess of \$50,000 directly from points outside the State of Ohio.

At all material times, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have shared common advertising, benefits, phones, sales, and purchasing; and have held themselves out to the public as single-integrated business enterprises.

² Member Liebman did not participate on the Board's Order denying the Respondents' request for review of the Regional Director's Supplemental Decision and Certification of Representative, which involved the Respondents' contentions regarding their objections to the election and the appropriateness of the unit. Member Liebman, however, did participate on the Order denying the Respondents' request for review of the Regional Director's Decision and Direction of Election, which rejected the Respondents' contention that the unit was inappropriate. Member Liebman finds that the Respondents have not raised any new matters that are properly litigable in this unfair labor practice proceeding.

Members Cowen and Bartlett did not participate at the stage of the representation proceeding involving the Respondents' request for review of the Decision and Direction of Election. They, however, participated on the Order denying the Respondents' request for review of the Supplemental Decision and Certification of Representative. Accordingly, they also find that the Respondents have not raised any matters that are properly litigable in the instant proceeding.

Based on their operations described above, the Respondents constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

We find that the Respondents, as a single Employer, have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Brotherhood of Teamsters, Local Union No. 377, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 4, 2002, the Union was certified on February 8, 2002, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers and warehouse employees employed by Palmer Donavin Manufacturing Co. and P-D Midwest Transport, Inc. at the facility located at 1400 Front Street, Warren, Ohio, excluding all clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On about April 10, 2002, the Union, by letter, requested the Respondents to recognize it and bargain collectively, and, since about April 15, 2002, the Respondents have refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 15, 2002, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to

bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondents, Palmer Donavin Manufacturing Co., and P-D Midwest Transport, Inc., Warren, Ohio, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Teamsters, Local Union No. 377, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time drivers and warehouse employees employed by Palmer Donavin Manufacturing Co. and P-D Midwest Transport, Inc. at the facility located at 1400 Front Street, Warren, Ohio, excluding all clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at their facility in Warren, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since April 15, 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. September 30, 2002

Wilma B. Liebman,	Member
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William B. Cowen,	Member
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Michael J. Bartlett,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Brotherhood of Teamsters, Local Union No. 377, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time drivers and warehouse employees employed us at our facility located at 1400 Front Street, Warren, Ohio, excluding all clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

PALMER DONAVIN MANUFACTURING CO., AND
P-D MIDWEST TRANSPORT, INC.